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Situation of human rights in the Democratic People's Republic of Korea*

Summary

The present report is the first by the new mandate holder since he assumed official functions as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, on 1 August 2016. The Special Rapporteur first provides an overview of recent developments in the Democratic People's Republic of Korea, then briefly outlines the human rights situation in the country and the challenges ahead. The Special Rapporteur also reviews major efforts made at the international level in the past years to address accountability for human rights violations in the country. In addition, he reviews the engagement by the Government of the Democratic People's Republic of Korea with the United Nations human rights mechanisms. The report raises concerns about the diversion of attention away from the human rights situation in the Democratic People's Republic of Korea as a result of the increased military tensions on the Korean peninsula. The Special Rapporteur also calls upon the Government of the Democratic People's Republic of Korea to cooperate with the new mandate holder.

* The report has been submitted after the deadline in order to take into consideration and reflect latest developments.

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I. Introduction

1. The last five years witnessed a shift in the way in which the international community responds to the human rights situation in the Democratic People's Republic of Korea. The findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea that crimes against humanity had been, and were being, committed in the country (A/HRC/25/63) highlighted the need to address the situation from the perspective of international criminal justice and human rights law. At the same time, the commission's findings also underscored the serious challenges to making concrete improvements to the situation of human rights in the Democratic People's Republic of Korea. The dangerous escalation of tensions on the Korean peninsula and in North-East Asia at large has exacerbated such challenges. Sanctions against the Democratic People's Republic of Korea, including those imposed by the Security Council, also have an increasing impact.

2. The present report is the first by the new Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea since he assumed official functions on 1 August 2016. It was prepared in just over one month following his appointment. The Special Rapporteur first provides an overview of recent developments in the Democratic People's Republic of Korea, then briefly outlines the human rights situation in the country and the challenges ahead. The Special Rapporteur also reviews major efforts made at the international level in the past years to address accountability for human rights violations in the country, as well as the engagement by the Government with the United Nations human rights mechanisms.

3. The Special Rapporteur aims to discharge his mandate by building upon the achievements of his predecessors.

II. Overview of recent developments in the Democratic People's Republic of Korea

4. Following the death of his father in 2011, Kim Jong Un has taken steps to consolidate his power as the Supreme Leader of the Democratic People's Republic of Korea. In May 2016, pursuant to a decision by the Political Bureau of the Central Committee, the Workers' Party of Korea held its Seventh Congress — the first congress to be held since 1980. Reportedly, 3,467 representatives, elected by local- and provincial-level Party committees, participated in the Congress with voting rights; 200 participants had the right to speak; and 1,387 representatives participated as observers. Mr. Kim, elected as the Chairman of the Party, stressed the need to "bring about a turn in improving the people's living standard" and introduced a five-year strategy for economic development, a plan which might be considered in light of the obligations of the Government as a State party to the International Covenant on Economic, Social and Cultural Rights.[1] Mr. Kim also emphasized "the strategic

[1] Korean Central News Agency, "Kim Jong Un Sets Forth Tasks for Completing Socialist Cause" (Pyongyang, 7 May 2016).

line of simultaneously pushing forward economic construction and the building of nuclear force".[2]

5. In June 2016, the fourth session of the thirteenth Supreme People's Assembly was held. During the session, the National Defence Commission, the highest military decision-making body, was abolished and replaced by the State Affairs Commission. Mr. Kim was elected as the Chair of the new Commission.

6. The Democratic People's Republic of Korea has continued its pursuit of nuclear weapons. On 9 September 2016, eight months after the fourth nuclear test was carried out on 6 January 2016, the fifth nuclear test was conducted, reportedly the largest ever. According to the media, the Nuclear Weapons Institute of the Democratic People's Republic of Korea stated that "scientists and technicians of the Democratic People's Republic of Korea carried out a nuclear explosion test to judge the power of a nuclear warhead newly studied and manufactured by them at the northern nuclear test ground under the plan of the Workers' Party of Korea ... for building strategic nuclear force".[3] The Democratic People's Republic of Korea also conducted several launches of missiles of various ranges, with some landing in the exclusive economic zone of Japan. After the launch on 5 September 2016, the Government of the Democratic People's Republic of Korea declared that "the recent ballistic rocket launch exercise of the Korean People's Army was successfully conducted without any negative impact on the security of the countries around the Democratic People's Republic of Korea and the international waters as before".[4] The Government maintains that it is exercising legitimate measures of self-defence.

7. The international community, collectively through the Security Council, has considered the nuclear tests and missile launches to be in violation of previous resolutions and has imposed tough and incremental targeted sanctions and issued statements of condemnation in the strongest terms. Some States have also adopted unilateral measures, including of a military nature. Consequently, tensions have been on the rise on the Korean peninsula and in North-East Asia, with prospects for future developments unknown.

8. While access to the outside world continues to be strictly controlled in the Democratic People's Republic of Korea, a number of external and internal factors may be creating conditions for a progressive opening of the country. Informal private commercial activities are reportedly now the main source of income for a large part of the population, while the formal planned economy and the public food distribution system are not fully functioning. Meanwhile, an increasing number of people reportedly have access to information, which has not heretofore been permitted by the authorities, including through short-wave audio broadcasts and the widespread use of mobile telephones and other devices.

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[2] Korean Central News Agency, "Kim Jong Un Delivers Report on Work of WPK Central Committee at Its Seventh Congress" (Pyongyang, 7 May 2016).

[3] *Rodong Sinmun*, "DPRK Succeeds in Nuclear Warhead Explosion Test" (12 September 2016), available at https://kcnawatch.co/newstream/1473665143-633521718/dprk-succeeds-in-nuclear-warhead-explosion-test/.

[4] Korean Central News Agency, "DPRK FM Spokesman Rejects UN Security Council's Press Release" (7 September 2016), available at https://kcnawatch.co/newstream/1473265236-387818369/dprk-fm-spokesman-rejects-un-security-councils-press-release/.

9. The Special Rapporteur encourages the Government of the Democratic People's Republic of Korea to regard these important dynamics as opportunities to engage with its own people and to pursue greater integration in and cooperation with the rest of the world.

III. Human rights situation in the Democratic People's Republic of Korea

10. The Special Rapporteur stresses that the present report is his first since assuming his mandate on 1 August 2016 and that he has not been able to conduct a field visit. Consequently, in this section, he aims mainly to outline the human rights record of the Democratic People's Republic of Korea to date, while acknowledging the critical challenges to improving the human rights situation of people in the country.

11. The human rights situation in the Democratic People's Republic of Korea was most comprehensively addressed by the commission of inquiry on human rights in the Democratic People's Republic of Korea. In its report, issued in February 2014, the commission concluded that "systematic, widespread and gross violations of human rights have been, and are being, committed by the Democratic People's Republic of Korea, its institutions and officials", and that many of them may "constitute crimes against humanity" (A/HRC/25/CRP.1, para. 1211). The commission highlighted six categories of human rights violations: violations of the freedoms of thought, expression and religion; discrimination on the basis of State-assigned social class, gender and disability; violations of the freedom of movement and residence, including the freedom to leave one's own country; violations of the right to food and related aspects of the right to life; arbitrary detention, torture, executions, enforced disappearance and political prison camps; and enforced disappearance of persons from other countries, including through abduction.

12. The commission of inquiry made a set of recommendations to the Democratic People's Republic of Korea, China and other States, to the Korean people and civil society, as well as to the international community, the United Nations and other stakeholders. These recommendations, which vary in their contents, have prompted a series of developments worldwide. Within the United Nations framework, in particular, the human rights situation in the Democratic People's Republic of Korea gained major attention and triggered new initiatives to address it. Some of them are addressed in the following sections, while others need to be developed further.

13. In 2015, the General Assembly again adopted a resolution (resolution 70/172) in which it condemns the long-standing and ongoing systematic, widespread and gross violations of human rights in the Democratic People's Republic of Korea, including those which the commission of inquiry has said may amount to crimes against humanity, and the continuing impunity for such violations.

14. The latest pronunciation from a United Nations body in this respect came from the Human Rights Council, which, in its resolution 31/18 of 8 April 2016, condemns in the strongest terms the long-standing and ongoing systematic, widespread and gross human rights violations and other human rights abuses committed in the

Democratic People's Republic of Korea, and expresses its grave concern at the detailed findings made by the commission of inquiry.

15. Since its latest debate on the human rights situation in the Democratic People's Republic of Korea in December 2015, in a number of statements which referred to military tests by the country, the members of the Security Council "further regretted that the Democratic People's Republic of Korea is diverting resources to the pursuit of ballistic missiles while Democratic People's Republic of Korea citizens have great unmet needs".[5] This statement contains a clear human rights dimension in relation to a country that has suffered widespread hunger in the past, where many people remain food insecure and where the commission of inquiry found that the State has consistently failed in its obligation to use the maximum of its available resources to feed those who are hungry (A/HRC/25/63, para. 51).

16. The Special Rapporteur is prepared to follow up on all efforts towards addressing an extremely delicate and challenging human rights situation. He is also ready to expand the agenda and to explore additional strategies, based on his own assessments and experiences, as the new Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.

IV. Efforts by the international community to address accountability for human rights violations in the Democratic People's Republic of Korea

A. Establishment of the Office of the United Nations High Commissioner for Human Rights in Seoul

17. In paragraph 10 of its resolution 25/25, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide the Special Rapporteur with increased support, including through the establishment of a field-based structure to strengthen monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea to ensure accountability, to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders, and to maintain visibility of the situation of human rights in the Democratic People's Republic of Korea, including through sustained communications, advocacy and outreach initiatives. On 23 June 2015, the United Nations High Commissioner for Human Rights inaugurated the field-based structure in Seoul during his visit to the Republic of Korea.

18. As of August 2016, the field-based structure was fully operational and was implementing all aspects of its mandate. It cooperated with government actors, United Nations entities, civil society and others. It monitored the human rights situation, including through interviews with persons who had left the Democratic

[5] See Security Council, press statement on the Democratic People's Republic of Korea Ballistic Missile Launches, issued on 26 August 2016; see also Security Council, press statement on the Democratic People's Republic of Korea Failed Ballistic Missile Launches, issued on 1 June 2016.

People's Republic of Korea, and other sources. The Office sought to raise awareness about the human rights situation in the Democratic People's Republic of Korea by organizing and participating in workshops and seminars, and continued to be active on social media platforms. It also provided ongoing support to the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.

B. Group of independent experts

19. Following the recommendations made to the General Assembly and to the Human Rights Council by the previous Special Rapporteur, the Council adopted its resolution 31/18 on 23 March 2016, in which it requests the United Nations High Commissioner for Human Rights to designate a maximum of two existing independent experts in support of the work of the Special Rapporteur to focus on issues of accountability for human rights violations in the country. Moreover, the Council requests the group (a) to explore appropriate approaches to seek accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amount to crimes against humanity, as found by the commission of inquiry; and (b) to recommend practical mechanisms of accountability to secure truth and justice for the victims of possible crimes against humanity in the Democratic People's Republic of Korea, including the International Criminal Court.

20. In September 2016, the United Nations High Commissioner for Human Rights designated Sonja Biserko (Serbia) and Sara Hossain (Bangladesh) to serve as independent experts. Ms. Biserko and Ms. Hossain are scheduled to visit Geneva in late September, together with the Special Rapporteur, to discuss the strategy for the group and to meet with major stakeholders. The report of the group will be submitted to the Human Rights Council in March 2017.

C. Security Council

21. On 18 December 2014, the General Assembly adopted its resolution 69/188 on the situation of human rights in the Democratic People's Republic of Korea by an overwhelming majority. In the resolution, the Assembly, inter alia, decided to submit the report of the commission of inquiry to the Security Council and encouraged the Council to consider the relevant conclusions and recommendations of the commission and take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court.

22. On 22 December 2014, the Security Council held a meeting to discuss the human rights situation in the Democratic People's Republic of Korea (S/PV.7353). On behalf of the United Nations High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights briefed the Council on the findings of the commission of inquiry. The Council voted to include the issue on its agenda, paving the way for regular meetings on the issue.

23. On 10 December 2015, the Security Council held a second debate on the situation of human rights in the Democratic People's Republic of Korea (S/PV.7575). The United Nations High Commissioner for Human Rights was invited to brief the Council. The High Commissioner recalled the ongoing nature of serious human rights violations in the country and emphasized that accountability must go hand in hand with an open dialogue to encourage the Government to undertake reforms. On 17 December 2015, the General Assembly adopted its resolution 70/172, in which it expressed its concern at the failure of the authorities of the Democratic People's Republic of Korea to prosecute those responsible for human rights violations, and encouraged the Council to continue its consideration of the relevant conclusions and recommendations of the commission of inquiry and take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court.

24. The Special Rapporteur believes that the Security Council should remain seized of the matter, in particular because of the close interrelationship between peace, security and human rights on the Korean peninsula and in North-East Asia.

V. Engagement of the Democratic People's Republic of Korea with the United Nations human rights mechanisms

25. In recent years, the Government of the Democratic People's Republic of Korea has engaged with United Nations human rights mechanisms on a number of occasions. Such engagement is a positive step that has the potential to provide opportunities for further cooperation in the areas of human rights promotion.

26. On 3 July 2013, the Democratic People's Republic of Korea signed the Convention on the Rights of Persons with Disabilities. On 10 November 2014, it ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. In November 2015, it notified the United Nations of its decision to withdraw its reservations to articles 2(f) and 9(2) of the Convention on the Elimination of All Forms of Discrimination against Women. In April 2016, it submitted its combined second, third and fourth periodic report to the Committee on the Elimination of Discrimination against Women and its combined fifth and sixth periodic report to the Committee on the Rights of the Child.

27. In May 2014, the Democratic People's Republic of Korea underwent its second universal periodic review. In September 2014, the Government submitted its position with regard to recommendations arising from the second cycle, indicating that it would accept 113 of the 268 recommendations. The Government had also accepted 81 recommendations from the first cycle of the review. A number of these recommendations concern the fulfilment of the right to adequate food (see A/HRC/27/10 and A/HRC/27/10/Add.1).[6] In this regard, and bearing in mind that

[6] For example, recommendation 124.143: "Ensure the right to food for its entire population without any restriction" (Switzerland). Other recommendations accepted in relation to the right to food include 124.53, 124.55, 124.75, 124.141, 124.142, 124.145, 124.146, 124.147, 124.148 and 124.149.

the country has already suffered widespread hunger in the past and that many people remain food insecure, it is critical that the Government ensure that international humanitarian aid agencies which are facing challenges to deliver humanitarian assistance, in particular to the most vulnerable groups and to the rural areas, are able to carry out their work in line with humanitarian standards and principles. Of equal importance, the international community should provide adequate support and ensure that the sanctions imposed do not impede the work of the humanitarian agencies.

28. The Democratic People's Republic of Korea also accepted recommendations at the universal periodic review that it submit reports to United Nations human rights treaty bodies, including the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. The Democratic People's Republic of Korea complied with these recommendations and submitted the relevant reports in April 2016, a welcome step. Other accepted recommendations related to economic and social rights, the rights of women and children, human rights education, a rights-based approach to development and family reunification.

29. Regrettably, since the establishment of the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, in 2004, the Government has consistently refused to engage with mandate holders. My predecessors were not able to visit the country. Marzuki Darusman was able to meet just once with the representatives of the country, without concrete outcome.

30. The Government of the Democratic People's Republic of Korea has always rejected this country mandate, arguing politicization, selectivity and double standards of the country-specific mandates of the special procedures. This is a view shared by other members of the United Nations, although they do not always apply it to all country-specific mandates. The Special Rapporteur acknowledges this fact, but also believes that holding this stance does not necessarily imply the impossibility to cooperate. There are good examples concerning other countries in this regard. International cooperation is one of the main purposes of the Organization under the Charter of the United Nations (Article 1.3) and is a critical and mutually beneficial tool for achieving improvements in the enjoyment of human rights by all. In light of this, the Special Rapporteur, considering the impartiality, independence and objectivity of his role, urges the Democratic People's Republic of Korea to cooperate with him. He also advises other States Members of the United Nations to do likewise and to exercise all available leverage to create an opening for dialogue between the mandate holder and the Government of the Democratic People's Republic of Korea.

31. Two years ago, the Democratic People's Republic of Korea indicated its willingness to receive technical assistance from OHCHR. Initial discussions were held on the possible scope of such assistance. In September 2015, the then Minister of Foreign Affairs extended an invitation to the High Commissioner to visit the country. The invitation remains under consideration, although increasing international tensions have made continuing negotiations on this matter difficult.

VI. Conclusion and recommendations

32. Increased attention to the human rights situation in the Democratic People's Republic of Korea has put the issue squarely on the agenda of the international community. There is broad resolve at the international level to address serious human rights violations in the country, in particular crimes against humanity.

33. At the same time, escalating tension on the Korean peninsula and in North-East Asia has dominated international concern. In this regard, the Special Rapporteur believes that the preoccupation with military tensions in the region should not divert attention away from the human rights situation of women, men and children in the Democratic People's Republic of Korea.

34. While addressing the situation remains a challenge, the engagement of the Government of the Democratic People's Republic of Korea with United Nations human rights mechanisms, including through treaty reporting and engagement in the universal periodic review process, provides an opportunity for future engagement. The new Special Rapporteur is the third holder of this mandate. It is very much hoped that the engagement with these United Nations mechanisms can also be extended to the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.

35. In that regard the Special Rapporteur wishes to make the following recommendations.

36. The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to:

(a) Abide by all the international human rights instruments it has ratified and immediately halt all the human rights violations identified by the United Nations human rights mechanisms;

(b) Continue to engage in dialogue with the Office of the United Nations High Commissioner for Human Rights on technical cooperation;

(c) Cooperate with the United Nations human rights mechanisms, including the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, by granting them access to the country.

37. The Special Rapporteur calls upon the General Assembly to:

(a) Strongly urge the Government of the Democratic People's Republic of Korea to respect fully all human rights and fundamental freedoms, and to remain seized of the situation;

(b) Urge the Government of the Democratic People's Republic of Korea to initiate cooperation with the Special Rapporteur by accepting to convene a meeting with him;

(c) Continue to call upon the Security Council to ensure that the sanctions imposed in response to breaches of the Council's resolutions by the Democratic People's Republic of Korea do not negatively impact the work of humanitarian agencies;

(d) Continue to call upon the Security Council to hold regular briefings on the situation in the Democratic People's Republic of Korea, with the participation of the United Nations High Commissioner for Human Rights and other relevant experts, including the Special Rapporteur.

38. The Special Rapporteur calls upon Member States to:

(a) Engage with the Government of the Democratic People's Republic of Korea to take specific steps to facilitate and verify the implementation of the recommendations accepted during the first and second cycles of the universal periodic review;

(b) Facilitate the work of the Office of the United Nations High Commissioner for Human Rights in Seoul and the Special Rapporteur, and provide them with timely access to relevant information and potential witnesses, in particular people who have left the Democratic People's Republic of Korea, who may have information.

39. The Special Rapporteur calls upon the United Nations system as a whole to continue its efforts to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in line with the Secretary-General's Human Rights Up Front initiative.

40. Lastly, the Special Rapporteur calls upon civil society to continue its important work in raising awareness about the human rights situation in the Democratic People's Republic of Korea, including by documenting and reporting on human rights violations committed by the Government of the Democratic People's Republic of Korea.